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In re Application of :
Brown : DECISION ON PETITION
Application No. 10/680,426 :
Filed: October 8, 2003 :
Atty. Dkt. No.: BROW3007/BEU :

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OFFICE OF PETITIONS

This decision is in response to the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181 filed February 14, 2008. This is also a decision on the alternative petition to revive under 37 CFR 1.137(b).

The application became abandoned July 12, 2007 for failure to timely submit a proper reply to the Notice of Allowability (Notice) mailed April 11, 2007. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed August 8, 2007. A petition under 37 CFR 1.181 was filed October 9, 2007 and dismissed December 12, 2007.

DECISION UNDER 37 CFR 1.181

Petitioner continues to argue that corrected formal drawings were submitted on May 24, 2006 and that the drawings were believed to be compliant. Petitioner has reiterated that the reference in the Notice to Form PTO-948 appeared inadvertent and, therefore, corrected formal drawings were not required. Petitioners, acknowledge that a reply was not submitted in response to the Notice mailed April 11, 2007.

Petitioner failed to submit a reply to the Notice within the statutory period of time for reply. The application went abandoned as a matter of law on July 12, 2007. Absent evidence to establish that a reply to the Notice was timely submitted, the holding of abandonment will not be withdrawn. Petitioner's belief that the Notice contained an error is not grounds for withdrawing the holding of abandonment.

Accordingly, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the Notice is accepted as having been unintentionally delayed.

Accordingly, the petition under 37 CFR 1.137(b) is hereby
GRANTED.

This application will be forwarded to the Office of Patent Publication for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.


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Office of Petitions